ORDER OF REFERENCE

(Order No. SWL 773 LLD 76 dated 25th October 1976).

Orders on I.A. No. 1 and I.A. No. 2.

This is a Reference by the State Government issued in exercise of its powers under Section 10 (1) (d) of the Industrial Disputes Act, 1947. The points of dispute referred for adjudication to this Tribunal is the following :—

"1. Are the Management of A.C.C. Vickers-Babcock Ltd., Shahabad Works, Shahabad/A.V.B. Shahabad Works Employees' Consumers Co-operative Society Ltd., Shahabad, justified in demoting Sri K. Chakrapani, Supervisor of the canteen with effect from 15-4-1976 from 'C' Grade Supervisor to 'E' Grade Vendor ?

2. If not, to what relief the abovesaid workman entitled ?"

2. Notice in respect of the above reference was taken out on the I Party *viz.*, the workman represented by the Joint Secretary, I.T.I. Trained and General Workers Union, Shahabad, Gulbarga District, and the II Party represented by the Personnel and the Administration Manager, A.C.C. Vickers-Babcock Ltd., Shahabad. Though the I Party was served with the notice of the Reference for appearance before the Tribunal on 24-11-1976, the I Party sent a telegram praying for an adjournment. The II Party entered appearance through Sri G. S. Ullal, Vice-President of the Karnataka Employers' Association. However, on the very same day (24-11-1976) a statement was received by post from K. Chakrapani, the workman mentioned in the points of dispute, in which, calling himself as the aggrieved workman, the said Chakrapani alleges as follows :—

He joined service in the Canteen as the Supervisor in 1966. Since he could not oblige the Directors of the Co-operative Society by indulging in malpractices, they started to harass him. The Joint Secretary of the Society asked him to make correction in the Ledger Book. Since he refused, a charge-sheet was fabricated and issued by the Society and later, he was demoted. The other alternative open to him was resignation. But, being a poorman, having a big family depending on him, he preferred to retain the job. When he informed the highest Authority

about the malpractices, thinking that he will get justice, the General Manager wrote on his application even without asking him anything that his removal from service will be recommended if he makes such reports. Then, finally, he approached the Trade Union to which he belongs. When the Trade Union took up his case, the Society fabricated a new charge-sheet and suspended him from duty with effect from 1-5-1976. No enquiry was held for about 5 months and so, he came from Shahabad to Bangalore by Padayatra and reached Bangalore on 6-9-1976. In the meanwhile, on 28-7-1976, the Society illegally dismissed him from service. He prays that a detailed enquiry in person may be held. Along with the above statement, K. Chakrapani also enclosed a statement showing the service conditions of the workers.

3. The statement of the II Party was filed on 6-9-1977. The II Party contended that the I Party workman was at no time an employee of the II Party and that the dispute raised in the Reference is not an Industrial Dispute. The I Party should be called upon to take a definite stand as to whether he was an employee of the II Party or of the A.V.B. Shahabad Works Employees' Consumers' Co-operative Society, Limited. Sometimes, the I Party-workman states that he is an employee of the said Society and at other times, that he was an employee of the II Party. Adopting the former stand, he resorted to Section 72 of the Karnataka Co-operative Societies Act and sought relief from the Assistant Registrar of Co-operative Societies, Gulbarga. The Assistant Registrar recorded the finding that he was an employee of the Society and directed reinstatement. But, in the appeal filed by the Society before the Karnataka Appellate Tribunal, the said order of reinstatement was set aside and the I Party has been directed to bring a dispute in proper form under Section 72 of the Co-operative Societies Act. The Issue as to whether the disputes is an Industrial Dispute should be heard as a Preliminary Issue. As the II Party was at no time the employer of the I Party-workman, the averments and allegations made in his statement against the Society and its Directors are wholly irrelevant in so far as the II Party is concerned and all the said allegations in so far as they pertain to or involve the II Party are denied. The Reference may be rejected.

4. It may be stated here that the statement received on 24-11-1976 as indicated above was not from the I Party. As there was no response from the I Party, subsequent to the telegram referred to earlier for a long length of time, a notice was sent by Certificate of Posting to the I Party saying that the proceedings stand adjourned to 2-11-1977 for filing of the I Party's Rejoinder, if any, and also for document and witness lists of both the parties. The I Party remained absent on 2-11-1977 and on the subsequent hearing dates on 23-11-1977, 9-12-1977, 5-1-1978 and 4-2-78. However, on 4-2-1978, the I Party-workman, *viz.* K. Chakrapani, entered appearance through Counsel and filed an application under Section 11(1) of the Industrial Disputes Act read with Order 1 Rule 10(2) of the Code of Civil Procedure to permit the said Chakrapani to be substituted for the I Party in the proceedings. In the affidavit filed in support of the statement, the said K. Chakrapani stated that he is the workman involved in the Reference, that the question that is to be decided is whether his demotion from supervisor to vendor is legal or not, that since the dispute was raised by the Union of which he was a Member, the reference has been made in the name of the Union and that since the Union, *viz.*, the I Party, does not appear to be interested in the proceedings, he should be allowed to contest the case, by substituting him for the I Party and that, if he is not so represented in the proceedings, he will be at great disadvantage.

5. The II Party filed its. objections contending that the application filed by K. Chakrapani (which has been numbered as I.A. No. 1) is not maintainable because he has no locus standi. The present reference is not a matter regarding termination of service and hence, outside the purview of Section 2(a) of the Industrial Disputes Act. The II Party also made mention of the fact that the Union, which is stated to have sponsored the dispute, as no time, attended the Tribunal's hearings for the last 15 months and also has not filed even a claim statement and that, under the circumstances, this is a fit case where the reference should be rejected for non prosecution. The decision in Ram Prasad Vishwakarma *vs.* Industrial Tribunal and others (1961 I LLJ 504) was also cited and relied upon in the objections.

6. On the same day on which the II Party filed the above objections, another Application, numbered as I.A. No. 2, was filed by the said K. Chakrapani. requesting that he may be impleaded as the necessary Party in the proceedings in the interest of justice. The averments made by the said K. Chakrapani in the affidavit enclosed to this petition are more or less the same as what he had made in the affidavit filed earlier by him along with I.A. No. 1.

6A. This fresh application was also opposed by the II Party by filing objections raising more or less the same grounds. The II Party contended that Sri K. Chakrapani is neither a necessary nor a proper party and that the Tribunal has no jurisdiction under Section 11 of the Industrial Disputes Act to direct that additional parties be impleaded.

7. The proceedings, thereafter, underwent several adjournments, mostly at the instances of K. Chakrapani and his Counsel on the ground of Councel's absence/inconvenience and inability to secure the full text of the decision of the Andhra Pradesh High Court reported in 1977(1) A.P.L.J. 426 as seen from certain digest of reported cases. On another occasion, K. Chakrapani represented that the very same decision has been reported in the short notes in 1977 Lab. I.C. (N.O.C.) 55. The II Party's Counsel relied solely upon the Supreme Court's decision in Ram Prasad Vishwakarma's case and concluded the argument.

8. During his arguments addressed subsequently, the Counsel for the Applicant, Chakrapani, has also relied upon Gambhirji *vs.*-Bind Basni Prasad (S) AIR 1955 369.

9. The point that arises for consideration is whether K. Chakrapani is entitled to be substituted for the I Party brought on record as an Additional necessary party as prayed for by him in I.A. Nos. 1 and 2 respectively.

10. As clearly admitted by K. Chakrapani, the dispute was sponsored by the I Party *viz.*, the Union to which K. Chakrapani is a Member.

11. It is clearly laid down by the Supreme Court in Ram Prasad Vishwakarma's case that a dispute between an individual workman and the employer cannot be an industrial dispute as defined under Section 2(k) of the Industrial Disputes Act unless

it is taken up by an Union of the workmen or by a considerable number of workmen and that further, the necessary corollary to this is that individual workman is at no stage a party to the industrial dispute independently of the Union. The Supreme Court has further observed that the Union of those workmen, who have by their sponsoring turned the individual dispute into an industrial dispute, can, therefore, claim to have a say in the conduct of the proceedings before the Tribunal. This was a case where the workman involved in the dispute made an application before the Industrial Tribunal praying that two of his co-workers, who were named by him, might be allowed to represent his case before the Tribunal instead of the Secretary of the Union, Fateh Singh, and that he did not want Fateh Singh to help him in the case as he had no faith in him. By this application, the workman in question sought to overcome the compromise petition which was entered into by the Management and the Union and filed before the Court. When this application filed by him was dismissed by the Tribunal, the workman in question filed a fresh petition stating that he had not authorised Fateh Singh to enter into any agreement in his case and requesting that the compromise filed be not accepted. This application was also rejected and the Tribunal passed an Award in terms of the compromise petition. After posing the question as to whether the workman in question was entitled to separate representation in spite of the fact that the Union which had espoused his cause was being represented by its Secretary, Fateh Singh, the Supreme Court observed as indicated earlier and rejected the Appeal which was filed by the workman in question.

12. The counsel appearing for the Applicant K. Chakrapani, however, tried to distinguish the Supreme Court's decision by pointing out that in that case, the Union was actively on record and had actually taken part in the negotiations pending before the Tribunal and finally entered into a compromise which was challenged by the workman concerned as not binding on him, that, in the present case, the I party Union has forwarded a memo saying that since the concerned workman, *viz.*, K. Chakrapani, has made his own arrangements to conduct his case in the proceedings, the I Party has no objection and fully supports the stand taken by the workman.

13. This memo purports to have been signed by one Wahid and is dated as 1-7-1978 at Shahabad. It was filed before the Tribunal on the very same day 1-7-1978. In that way, Wahid is connected with the I Party Union, it is not clear. Even if the memo is treated as genuine, the case of Chakrapani to get himself substituted/impleaded does not improve for independently of the I Party Union, he has no locus standi. When the memo states that the I Party Union has no objection, obviously, to the separate arrangements made by K. Chakrapani to conduct this case, it does not follow that the I Party Union has withdrawn itself from the dispute. Therefore, the memo dated 1-7-1978 is of no legal consequence in favour of K. Chakrapani's plea that he should be allowed to be impleaded/substituted so that he can represent himself.

14. The counsel appearing for the parties have been heard further on the full context of the decision in 1977 Lab. I.C. (N.O.C.) 55 which has been reported subsequently at 1978 (53) F.J.R. 238 (Minerals & Metals Trading Corporation of India *vs.* D. V. Lingam). Following the observations of the Supreme Court in the Bombay Union of Working Journalists *vs.* The Hindu (1961 (21) F.J.R. 207), it was held that if there is no industrial dispute at all and the Labour Court has no Jurisdiction to proceed with the dispute, it is not possible to conceive of a situation where the Tribunal can be justified in exceptional circumstances to permit the workman to be represented by other persons as observed by the Supreme Court and that, further, the very fact that this exception was made by the Supreme Court will indicate that the Supreme Court was not of the view that the dispute ceased to be an industrial dispute when the Union or the workmen chose to withdraw from the contest. The question that falls for consideration is whether there is such withdrawal by the Union and there are exceptional circumstances to permit the workman, namely, the Applicant Chakrapani, to be represented by other persons. In the present case, the workman—the Applicant Chakrapani, is not a party to the reference. Before the question of permitting the workman—Applicant Chakrapani, to be represented by other persons, the workman Applicant Chakrapani should himself be a party to the proceedings. A change in his representation by the I Party Union

as per the reference would not therefore arise. As noticed earlier, apart from the memo dated 1-7-1978 filed by Wahid not being established as emanating from the I Party Union, there is no withdrawal from the contest by the I Party Union as per the said memo. All that is stated in the said memo is that the Applicant Chakrapani having made his own arrangements to conduct his case, the I Party has no objection and fully supports his stand. Further, exceptional circumstances are required to be made out by the Applicant Chakrapani. One of the ways in which exceptional circumstances to permit the Applicant Chakrapani to come on record by himself can arise would be the withdrawal from the contest by the I Party Union. When the memo dated 1-7-1978, the I Party Union has not specifically stated that it is no more interested in conducting the case any further and intends to withdraw from the contest and has also not sought any order permitting its withdrawal from the contest, this Tribunal would not be competent to treat the memo as withdrawal by the I Party Union and grant permission in that behalf. Such being the state of affairs, it is difficult to hold that there are exceptional circumstances to permit the Applicant Chakrapani to be represented by himself by allowing him to come on record as a party to these proceedings, or to be represented by others as substitutes for the I.Party Union after being so brought on record as a party to the proceedings.

15. In the result, the applications at I.A. Nos, 1 and 2 are rejected.

AWARD

16. The reference relates to the year 1976 and nearly 2 years have elapsed since the notice of the receipt of the reference, was served on the I Party. Except a telegram received on 23-11-1976 from the I Party Union's Secretary requesting for adjournment to file the claim statement, the I Party has not chosen to file any statement even though a copy of the II Party's statement was forwarded to it as long back as on 11-10-1977 with a direction to file its Rejoinder, if any, on the adjourned date of hearing on 2-11-1977. It is clear that the I Party is not interested in the dispute any longer though it has not clearly indicated its intention to withdraw from the contest so as to enable further steps to be taken.

17. The Reference is therefore rejected for want of prosecution by the I Party.

(Dictated to the Stenographer, transcribed by him and corrected by me).

(Sd.)
(F. L. F. ALVARES),
30-11-78.
Presiding Officer,
Industrial Tribunal,
Bangalore.

Order No. SWL 293 LLA, 78

Bangalore, dated the 25-10-1976—1-1-1979.

Whereas by State Govt. Order No. SWL 773 LLD 76 dated 25-10-76 the Industrial dispute between the workmen and the management of A.C.C. Vickers-Babcock Ltd., Shahabad Works, Shahabad Heavy Engineering, Shahabad, Gulbarga District, was referred to the Industrial Tribunal, Bangalore for adjudication.

And Whereas the Presiding Officer, Industrial Tribunal, Bangalore has submitted to the State Government its award in respect of the said Industrial Dispute.

Now, therefore, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Karnataka are pleased to direct the publication of the said award as above, in the *Karnataka Gazette.*

By Order and in the name of the Governor of Karnataka,

(M. VASUDEVAIAH)
Under Secretary to Government,
Social Welfare and Labour Dept.

P. R. No. 4
Part IV 2C(ii)